

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 25 2006

at 3 o'clock and 00 min. P.M.
SUE BEITIA, CLERK

Attorney for Defendant DELA CRUZ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00050 SOM
)	
Plaintiff,)	
vs.)	OBJECTION AND CORRECTIONS
)	TO DRAFT PRESENTENCE
HUGH DELA CRUZ,)	REPORT PREPARED
)	MAY 16, 2006; EXHIBITS "A" -
Defendant.)	"C"; CERTIFICATE OF SERVICE
_____)	

OBJECTION AND CORRECTIONS
TO DRAFT PRESENTENCE REPORT PREPARED MAY 16, 2006

COMES NOW Defendant, HUGH DELA CRUZ, by and through his
counsel, PAMELA O'LEARY TOWER, and hereby makes the following
objections/corrections to the draft pre-sentence investigation report (hereafter
"Draft PSR") prepared May 16, 2006, by United States Probation Officer Anne
Shimokawa.

Corrections:

Page 1: Counsel is retained.

Objections:

Criminal History

Paras. 44, 50, 51, and 77:

Defendant has been assessed 2 (two) criminal history points for two convictions, one point for a conviction in 1995 and the second point for a conviction in 2001. The 2001 conviction was a diversionary disposition pursuant to California Penal Code §1210.1 (Prop. 36 for drug offenders), however it was later formally expunged pursuant to California Penal Code §§1210.1(d)(1) and 1203.4 and therefore is not countable as criminal history. See U.S.S.C. §4A1.2(j) which provides that “Sentences for expunged convictions are not counted . . .” The docket sheet for the 2001 conviction reflects that on March 5, 2004, the judge granted Mr. Dela Cruz’s PC §1210.1(d)(1) petition for early termination of probation and his PC §1203.4 petition for formal expungement, set aside the conviction and dismissed the case ¹.

¹ See pages 3 and 4 of the court docket sheet for the 2001 conviction which is attached hereto as Exhibit A. Copies of PC 1210(d)(1) and PC 1203.4 are attached as Exhibits B and C respectively.

Mr. Dela Cruz's 2001 conviction was formally expunged. Therefore, the appropriate number of criminal history points is 1 (one). With only one criminal history point, Mr. Dela Cruz is eligible for safety valve consideration pursuant to U.S.S.G. §5C1.2 and 18 U.S.C. §3553(f)(1)-(5) which results in the subtraction of two additional offense levels to arrive at the correct total offense level of 29 with an advisory guideline range of 87-108 months.

DATED: Honolulu, Hawaii, May 25, 2006.

A handwritten signature in black ink, appearing to read 'Pamela O'Leary Tower', is written over a horizontal line.

PAMELA O'LEARY TOWER
Attorney for HUGH DELA CRUZ